

COMPLIANCE BOARD OPINION NO. 94-2

May 9, 1994

Ms. Mary T. Miller

The Open Meetings Compliance Board has considered your complaint dated November 17, 1993, in which you allege a violation of the Open Meetings Act in connection with the maintenance of minutes regarding the closed meeting of the New Carrollton City Council on October 4, 1993.

Your complaint states that on October 4, 1993, the New Carrollton City Council held a closed session. The Council initially prepared minutes of the October 4 closed session that referred only to the motion to close the session and a motion to open the session three minutes later. It is your understanding that some two weeks later, the Council Chairman "hastily made some handwritten notes ... and gave these notes to someone to put in the safe. It is my understanding that no other councilmember saw these notes nor approved them as being correct." You express concern "that if a lawsuit was brought down the road sometime, where's the city's documentation? Are handwritten notes seen only by the chairman and not approved by the full council as to their accuracy considered adequate?" You also complained that the minutes of the next open meeting of the council contained an insufficient statement regarding the closed session on October 4.

In a timely response on behalf of the City Council, Chairman Stephen L. Keleti described the closed session on October 4 as follows: "A motion to close the meeting at 9:15 P.M. was made by Councilman Schaffer ...," on the basis of the "specific personnel" exception in §10-508(a)(1) of the Act.¹ After unanimous approval of the motion, the closed session began. "The Mayor then told the Council of a personnel action which he had taken and asked the Council if there were any questions concerning such action. There being no questions, the Executive Session was ended and a motion to reopen the meeting was made ... and was unanimously adopted The meeting then reopened at 9:18 P.M. on October 4, 1993."

Mr. Keleti goes on to report that, prior to the Council's meeting on October 20, he reviewed the minutes of the October 4 closed session that had been prepared by the Acting Recording Secretary. "At that time, I noted that while the sections of the law were properly noted on the minutes (we had in fact discussed the personnel item) the report by the Mayor concerning the

¹ The complaint does not allege that the session was closed improperly.

personnel action that he had taken was not included in those minutes. Therefore I made a handwritten addition to such minutes in order to provide this additional information. I read the language to all of the Council members present just prior to the meeting and asked if there was any objection to the handwritten statement. No one voiced any objection."

Mr. Keleti suggests that, given the brevity and nature of the closed session, the typed minutes were themselves adequate to satisfy the requirements of the Open Meetings Act. Even if they were not, Mr. Keleti suggests that the amended minutes, reflecting his handwritten changes, were sufficient. Mr. Keleti goes on to point out that, whatever their level of detail, the minutes of a properly closed session are not publicly available in any case. It appears, however, the City Council did make available the original minutes of the October 4 closed session – that is, without Mr. Keleti's handwritten insertion.

Mr. Keleti's letter does not directly discuss the portion of the complaint that deals with the adequacy of the statement concerning the closed session of October 4 that appeared in the Council's minutes of the next open session. Mr. Keleti does observe that the minutes concerning a closed session "should never include the specific items which were discussed as it is not appropriate to make those public."

The subject of the minutes of a meeting is dealt with in §10-509 of the Act. First, it is clear that written minutes of each meeting, open or closed, are required. §10-509(b). All minutes, whether open or closed meeting, are to reflect the following:

- (i) Each item that the public body considered;
- (ii) The action that the public body took on each item; and
- (iii) Each vote that was recorded.

§10-509(c)(1). These are minimum requirements; the Open Meetings Act is not intended to "limit the matters that a public body may include in its minutes." §10-509(a)(2). With certain exceptions, minutes of closed sessions are sealed and not open to public inspection. §10-509(c)(3)(ii).

At the October 4 closed session of the New Carrollton City Council, the "item that the public body considered" was a report from the Mayor on a personnel matter. The Council took no action and no votes. The minutes originally prepared by the Acting Recording Secretary were not adequate, because they did not reflect the actual "item" of business – the Mayor's report.

But after the minutes were amended as described in Mr. Keleti's letter, they appear to satisfy the requirements of §10-509(c), given the nature of this closed session. Nothing in the Act precludes the rather informal manner in

which the Council amended the minutes. Hence, the Open Meetings Compliance Board finds that the minutes of the October 4, 1993, closed session of the New Carrollton City Council did not violate the Act.

In addition to a requirement that minutes be kept of all meetings, the Open Meetings Act has a special provision, §10-509(c)(2), dealing with subsequent disclosure of some elements of a closed session:

If a public body meets in closed session, the minutes for its next open session shall include:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under this subtitle for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

The next open session of the New Carrollton City Council following the October 4 closed session occurred on October 6. With respect to the October 4 closed session, the minutes of the October 6 meeting stated the following: "[Councilman Keleti] said a closed session was held at the end of the Monday night workshop at the request of the Mayor to discuss personnel actions. There was a unanimous vote to close the meeting, he said."

This statement does not meet the requirements of §10-509(c)(2). It fails to cite the authority for closing the session or to list the topic of discussion and the persons present. Indeed, because there is no listing of the persons present, the reference to the "unanimous vote to close the meeting" does not satisfy the requirement that there be "a record of the vote of each member to closing the session."

To be sure, because the City Council did disclose the partial minutes of the October 4 closed session, someone who read *both* the partial minutes from October 4 and the statement in the October 6 minutes would learn most of the information called for by §10-509(c)(2).² Nevertheless, the Act requires that this information be in one place, so that interested members of the public know where to look to find out the basics of what happened at a closed session.

² It is not clear, however, that an interested member of the public would have discerned the "topic of discussion" without access to Mr. Keleti's handwritten insertion.

Accordingly, the Open Meetings Compliance Board finds that the New Carrollton City Council violated §10-509(c)(2) of the Act.³

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
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³ Because the City Council took no action in response to the Mayor's report, there was no violation of the requirement that the statement include "each action taken during the session," although the Compliance Board believes that the better practice is to indicate explicitly that no action was taken, if, as here, that is the case.